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JIM IRVIN,  
Chairman  
TONY WEST,  
Commissioner  
CARL J. KUNASEK,  
Commissioner

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S STATEMENT  
OF GENERALLY AVAILABLE TERMS AND  
CONDITIONS.

DOCKET NO. T-01051B-99-0068

**U S WEST'S OPPOSITION TO AT&T  
AND TCG'S MOTION TO REJECT  
U S WEST'S STATEMENT OF  
GENERALLY AVAILABLE TERMS  
AND CONDITIONS**

U S WEST submits this opposition to the motion to dismiss its Statement of Generally Available Terms and Conditions ("SGAT") filed by AT&T Communications of the Mountain States, Inc., and TCG-Arizona (collectively "AT&T").<sup>1</sup>

In an attempt to short-circuit both this Commission's review of U S WEST's SGAT and U S WEST's application to provide in-region interLATA relief, AT&T has arrayed a host of irrelevant and misleading arguments contending that U S WEST's SGAT violates the Act and cannot support U S WEST's Section 271 application. AT&T's motion must be rejected.

U S WEST has filed its SGAT to provide competitive local exchange carriers ("CLECs") in Arizona with an additional option for obtaining interconnection, unbundled network elements, ancillary services, and resale from U S WEST. To the extent any CLEC does not wish to use the SGAT, it is free to negotiate a separate agreement with U S WEST, opt into another carrier's

<sup>1</sup> Review of U S WEST's SGAT has been assigned to a separate docket distinct from U S WEST's application to provide in-region interLATA service under Section 271 of the Act. AT&T mistakenly filed its motion to dismiss in the Section 271 docket, Docket No. T-00000B-97-0238. Because that docket is unrelated to the Commission's current review of U S WEST's SGAT, U S WEST has filed its opposition to AT&T's motion in this docket -- Docket No. T-01051B-99-0068, the docket to which the Commission assigned review of the SGAT.

1 agreement, or provide service under U S WEST's applicable Arizona tariffs. Indeed, Section  
2 252(f)(5) states that submission of an SGAT does not relieve a Bell operating company ("BOC")  
3 of its duty to negotiate in good faith, and U S WEST fully intends to honor that duty with any  
4 CLEC that wishes to negotiate an agreement.

5 U S WEST recognizes that all carriers, like AT&T, may not wish to avail themselves of  
6 the SGAT. However, the fact that AT&T does not like the SGAT is no reason to deny other  
7 carriers the choice of offering service under it. Indeed, AT&T's objections to U S WEST's  
8 SGAT are particularly inappropriate since AT&T has its own interconnection agreement with  
9 U S WEST and has no need to avail itself of U S WEST's SGAT. The Commission should not  
10 sanction AT&T's attempts to limit other competitors' options and competition in this manner.

11 As detailed below, U S WEST's SGAT is consistent with the Act, this Commission's  
12 decisions, and relevant FCC rules. AT&T raises only speculation about possible confusion and  
13 inconsistencies in U S WEST's SGAT. However, any contractual document is vulnerable to  
14 imagined disputes. U S WEST has attempted to address AT&T's conclusory statements and  
15 vague allegations to the extent possible, but this Commission should not require U S WEST to  
16 address every fanciful possibility, no matter how remote, in its SGAT.

17 Most important, U S WEST's ability to meet the requirements of Section 271, or its  
18 ability to rely on its SGAT to support its application, is not at issue in this docket. The sole issue  
19 before the Commission is whether it should approve U S WEST's SGAT within 60 days of its  
20 filing or allow it to go into effect, as set forth in 47 U.S.C. § 252(f). AT&T's arguments relating  
21 to Section 271 are irrelevant to this Section 252(f) process, and the Commission should reject  
22 AT&T's attempts to confuse and conflate the issues in these two separate proceedings.

23 For these reasons and those set forth below, the Commission should reject AT&T's  
24 motion and approve U S WEST's SGAT or allow it to go into effect.  
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1 **A. Until The FCC Issues New Unbundling Rules, U S WEST's SGAT Properly**  
2 **Permits CLECs To Access Unbundled Elements In The Same Manner As**  
3 **U S WEST Permitted In The Past.**

4 **1. CLECs Are Not Now Entitled To Assembled Elements Or The UNE**  
5 **Platform.**

6 AT&T claims that the Commission should reject U S WEST's SGAT because it does not  
7 require U S WEST to provide combined elements under 47 C.F.R. § 51.315(b), which the United  
8 States Supreme Court upheld in AT&T Corp. v. Iowa Utils. Bd., No. 97-826, slip op. (U.S. Jan.  
9 25, 1999). AT&T Motion at 4-5. AT&T, however, misrepresents the Supreme Court's decision.

10 In AT&T Corp. v. Iowa Utils. Bd., the Supreme Court made two critical holdings with  
11 respect to unbundled network elements ("UNEs") and access to assembled elements. First, the  
12 Court struck down the FCC rule -- 47 C.F.R. § 51.319 -- that established which network  
13 elements an incumbent local exchange carrier ("ILEC") must unbundle under Section 251(c)(3).  
14 The Supreme Court held that the FCC failed to give any meaning to the "necessary" and "impair"  
15 standards in 47 U.S.C. § 251(d)(2) and, instead, improperly gave competitive local exchange  
16 carriers "blanket access" to ILEC networks. AT&T Corp., slip op. at 20. AT&T fails to mention  
17 this critical holding. The Court noted that the FCC started with the unlawful presumption that  
18 elements must be unbundled if it is "technically feasible" to do so, and that this erroneous  
19 presumption infected the FCC's interpretation of § 251(d)(2). Id.

20 Second, the Court upheld 47 C.F.R. § 51.315(b), which barred ILECs from separating  
21 elements of their networks that they currently combine. Id. at 25-26. However, AT&T also does  
22 not mention that no party appealed the Eighth Circuit ruling that the FCC violated the Act when  
23 it issued Rules 51.315(c)-(f), which required ILECs to combine network elements for CLECs in a  
24 manner different than their current configuration and to combine CLEC facilities with ILEC  
25 UNEs. Because no party appealed that determination, those rules continue to be vacated and  
26 have no effect. Thus, U S WEST has no obligation to combine network elements in a manner  
different than their current configuration or to combine network elements with CLEC facilities.

1 Contrary to AT&T's motion, the Supreme Court did not decide that ILECs must provide  
2 CLECs with any particular combination of elements and did not order ILECs to provide the so-  
3 called "UNE platform." The Supreme Court explicitly recognized that its decisions to vacate  
4 Rule 319 and uphold Rule 315(b) and the "all elements" rule are tied. Thus, the Court stated that  
5 its decision to vacate Rule 319 may render as "academic" the ILECs' objections to Rule 315(b)  
6 and sham unbundling through the UNE platform. AT&T Corp., slip op. at 25-26. The Court  
7 explained that if the FCC on remand "makes fewer network elements unconditionally available  
8 through the unbundling requirement, an entrant will not longer be able to lease every component  
9 of the network." Id. at 25.<sup>2</sup>

10 Because Rules 319 and 315(b) are intrinsically related, the Commission cannot do as  
11 AT&T asks: it cannot apply the Supreme Court's decision in pieces. The Commission cannot  
12 reject U S WEST's SGAT for failure to provide currently combined elements or the UNE  
13 platform under Rule 315(b) without also accepting and implementing the Supreme Court's  
14 unambiguous decision to vacate the entirety of Rule 319, the FCC's interpretation of § 251(d)(2),  
15 and (as a result) Rule 317.<sup>3</sup> Under these circumstances, U S WEST would have no unbundling  
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17 <sup>2</sup> The Supreme Court decision upholding the "all elements" rule does not mean that CLECs are entitled to  
18 access every element that comprises a finished service, as AT&T claims. As the Supreme Court  
19 explained, this rule means only that CLECs do not have to provide their own facilities to gain access to an  
20 ILEC's unbundled elements under Section 251(c)(3). AT&T Corp., slip op. at 25 (there is no "facilities-  
21 ownership requirement"). The Supreme Court expressly stated that its decision to vacate Rule 319 could  
22 mean that CLECs would not be able to obtain all the elements that comprise a finished service. Id. ("[The  
23 'all elements' rule] may be largely academic in light of our disposition of Rule 319. If the FCC on remand  
24 makes fewer network elements unconditionally available through the unbundling requirement, an entrant  
25 will no longer be able to lease every component of the network"). Thus, for example, if the FCC on  
26 remand finds that switching does not meet the "necessary" and "impair" standards in Section 251(d)(2),  
CLECs will not be able to obtain access to every element that comprises a finished service under Section  
251(c)(3).

<sup>3</sup> Rule 317, 47 C.F.R. § 51.317, is the rule that permitted state commissions to order ILECs to unbundle  
elements in addition to the elements in now-vacated Rule 319. Rule 317 is invalid because it contains  
both the unlawful presumption that elements must be unbundled if it is "technically feasible" to do so,  
which the Eighth Circuit invalidated and no party appealed to the Supreme Court, and the unlawful  
"impairment" test the Supreme Court rejected. See MCI Telecomm. Corp. v. Bell Atlantic-Washington,  
Civ. No. 97-3076 (TFH), 1999 U.S. Dist. LEXIS 1673, \*16 n. 4 (D.D.C. Feb. 15, 1999) (because Rule  
51.317 includes the same unbundling criteria as Rule 51.319, the Supreme Court's rejection of Rule  
51.319 is "equally applicable" to Rule 51.317).

1 obligations, CLECs would be entitled to no elements at all, and as a result, CLECs could obtain  
2 no assembled or combined elements. Until the FCC determines which network elements  
3 U S WEST must unbundle and adopts a proper interpretation of Section 251(d)(2), there is no  
4 valid unbundling rule or standard, and accordingly, no means of determining which elements  
5 U S WEST is prohibited from separating.

6 Because of the uncertainty the Supreme Court's decision creates, U S WEST is prepared  
7 to provide unbundled elements to CLECs as set forth in their contracts with U S WEST until the  
8 FCC issues new unbundling rules consistent with the Act, but it will not provide assembled  
9 elements. U S WEST's SGAT reflects this reasonable, pro-competitive compromise.<sup>4</sup>

10 To permit CLECs who do not have their own facilities to access U S WEST UNEs,  
11 U S WEST proposes in its SGAT its InterConnection Distribution Frame ("ICDF").<sup>5</sup> AT&T  
12 claims that the Commission must reject the ICDF because a few other state commissions  
13 declined to adopt U S WEST's single point of termination ("SPOT") frame as a means of  
14 permitting CLECs to combine network elements. AT&T Motion at 4. AT&T's objections to the  
15 ICDF must be rejected for several reasons.

16 First, if AT&T or any other carrier does not wish to use the ICDF to obtain access to all  
17 elements that comprise a finished service, they do not have to do so. U S WEST already makes  
18 its finished services available in its resale offering. The only issue is price.

19 Furthermore, AT&T relies solely on other state commission determinations addressing a  
20 different proposal for permitting CLECs to access UNEs. AT&T presents no evidence regarding  
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22 <sup>4</sup> U S WEST's obligation to charge cost-based rates under 47 U.S.C. § 252(d)(1) extends only to elements  
23 it must unbundle under 47 U.S.C. §§ 251(c)(3) and 251(d)(2). Because switching and transport are no  
24 longer UNEs that U S WEST must unbundle under Section 251(c)(3), but are contained in the Section  
25 271 checklist, U S WEST has no current obligation to price them according to the cost-based standard in  
26 47 U.S.C. § 252(d)(1) or the FCC's Total Element Long Run Incremental Cost ("TELRIC") methodology.  
Thus, the prices set forth in the SGAT for switching and shared transport are not priced at TELRIC. All  
other potential and former UNEs are priced at TELRIC rates established in the cost docket.

<sup>5</sup> For those CLECs who have their own facilities that they wish to connect to U S WEST UNEs,  
U S WEST will bring the requested elements to the CLEC's collocation area, whether the CLEC uses  
cageless, shared or caged collocation.

1 U S WEST's ICDF proposal in this Arizona SGAT. Indeed, AT&T presents no Arizona-specific  
2 evidence at all.

3 In addition, as noted above, AT&T has its own interconnection agreement with  
4 U S WEST that sets forth the terms and conditions for AT&T to obtain access to U S WEST  
5 UNEs. To the extent AT&T does not wish to use the ICDF, it is free to obtain access to UNEs in  
6 accordance with that agreement.

7 Finally, while AT&T decries the SPOT frame (and by analogy the ICDF) as  
8 discriminatory before this Commission, AT&T admitted in Colorado and Nebraska proceedings  
9 that the SPOT frame is a useful means of permitting CLECs that provide some of their own  
10 facilities to combine their facilities with U S WEST network elements. Indeed, AT&T  
11 specifically requested that the Colorado Commission permit them to use the SPOT frame.  
12 Application for Rehearing, Reargument or Reconsideration of MCI WorldCom and AT&T,  
13 Docket No. 96S-331T (CPUC dated Nov. 17, 1998). Furthermore, in a recent cost docket  
14 proceeding in Nebraska, an AT&T witnesses testified that the SPOT frame is a useful means for  
15 permitting CLECs to combine their facilities with U S WEST UNEs. In The Matter Of The  
16 Commission On Its Own Motion, To Investigate U S WEST Communications' Cost To Establish  
17 Rates For Interconnection, Unbundled Network Elements, Transport And Termination And  
18 Resale Services, Application No. C-1415, Tr. at 1025-26 (NE PUC). In the Nebraska 271  
19 docket, Aliant Communications, a CLEC provisioning loops from U S WEST also testified in  
20 support of the SPOT frame as an appropriate method to access and combine UNEs. Thus,  
21 AT&T's complaints about the SPOT frame and the ICDF are disingenuous.

22 **B. U S WEST's SGAT Complies With All Resale Requirements**

23 AT&T claims that U S WEST's SGAT fails to comply with the resale requirements of the  
24 Act and the FCC's First Report and Order. AT&T Motion at 6-9. All of AT&T's claims are  
25 without merit.  
26

1 For example, AT&T claims that "[c]ontrary to the requirements of the Act, nowhere in  
2 Section 6 [of the SGAT] does U S WEST confirm that it will make available for resale . . . all  
3 telecommunications services it offers to retail customers." AT&T Motion at 6. U S WEST is  
4 already legally obligated to "offer for resale at wholesale rates any telecommunications service  
5 that [it] provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C.  
6 § 251(c)(4). U S WEST can see no reason why that legal obligation needs to be repeated in the  
7 SGAT. In the SGAT, U S WEST does offer all required telecommunications services for resale,  
8 including Basic Exchange Telecommunications Service, Basic Exchange Features and  
9 IntraLATA toll. AT&T does not point to any required service that is not offered for resale in the  
10 SGAT. Instead, AT&T makes a variety of ill-founded allegations, all of which are baseless.

11 AT&T claims that "Section 6.3.7 or [sic] the SGAT explicitly states that new retail  
12 services will not be made available for resale until ordered by the Commission." AT&T Motion  
13 at 6. That is simply not true. Section 6.3.7 states that if the Commission determines that other  
14 services are subject to resale, or if the Commission establishes new wholesale rates in the cost  
15 docket, U S WEST will incorporate such orders in the SGAT. That section does not state that  
16 U S WEST will offer new services for resale only if ordered to do so by the Commission.  
17 U S WEST understands that it is legally obligated to negotiate in good faith if a CLEC requests  
18 that other services be resold. Indeed, Section 17 of the SGAT specifically permits CLECs to  
19 request other services through the Bona Fide Request ("BFR") process.

20 AT&T's argument ignores that some retail services U S WEST offers -- such as voicemail  
21 and enhanced services -- are not "telecommunications services" for purposes of 47 U.S.C.  
22 § 251(c)(4). Furthermore, to the extent a new retail service must be resold, the Commission  
23 needs to establish the discount. Thus, it is entirely reasonable for U S WEST to handle requests  
24 for new services through the BFR process or await a Commission determination on its resale  
25 obligations before including a new retail service on its SGAT. Regardless, U S WEST is willing  
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1 to negotiate in good faith for amendment of the SGAT for CLECs that have adopted the SGAT  
2 to incorporate the resale of new retail offerings.

3 AT&T further claims that the SGAT does not contain a wholesale discount for private  
4 line service. However, AT&T deceptively omits the entire phrase from Section 6.1.3<sup>6</sup> which  
5 relates to "private line service used for special access." Many private lines are used to provide  
6 special access. Exchange access, however, is not subject to the resale requirements of Section  
7 251(c)(4). First Report and Order, Implementation of the Local Competition Provisions in the  
8 Telecommunications Act of 1996, No. 96-98, 11 FCC Rcd 21905, 1996 FCC LEXIS 4312, ¶ 224  
9 (rel. Aug. 8, 1996) ("First Report and Order"). Accordingly, U S WEST does not have to resell  
10 private line service used for special access at a discount.

11 The restrictions on resale in Section 6.2.2 are consistent with the FCC rules. For  
12 example, AT&T objects to the cross-class and Contract Service Arrangement ("CSA")  
13 restrictions in the SGAT. AT&T Motion at 6-7. However, the FCC rules permit cross-class  
14 selling restrictions. See 47 C.F.R. § 51.613(a)(1) & (b). In addition, the FCC has approved  
15 U S WEST's restriction on aggregation of CSA's to end users that are not similarly situated to the  
16 original CSA customer. See Application of BellSouth Corp., BellSouth Telecomm., Inc., and  
17 BellSouth Long Distance, Inc. for Provision of In-Region, interLATA Services in Louisiana, CC  
18 Docket No. 98-121, Memorandum Opinion and Order ¶ 317 (rel. Oct. 13, 1998).

19 Furthermore, U S WEST is not required to provide promotional offerings of less than 90  
20 days for resale. The FCC concluded that short-term promotional offerings of less than 90 days  
21 are not retail "rates" subject to the wholesale discount obligation. First Report and Order ¶ 949.  
22 Thus, U S WEST does not have to offer promotional rates to resellers. Consistent with its legal  
23 obligations, U S WEST offers the underlying services to resellers at a wholesale discount.

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26 <sup>6</sup> AT&T incorrectly cites Section 6.1.1 of the SGAT.

1 Contrary to AT&T's motion, AT&T Motion at 8-9, U S WEST is not required to resell  
2 enhanced services. The FCC has consistently held that enhanced services, such as voicemail, are  
3 information services, not "telecommunications services" subject to resale. See Application of  
4 BellSouth Corp., BellSouth Telecomm., Inc., and BellSouth Long Distance, Inc. for Provision of  
5 In-Region, interLATA Services in Louisiana, CC Docket No. 98-121, Memorandum Opinion  
6 and Order ¶ 314 (rel. Oct. 13, 1998); Federal-State Joint Board on Universal Service, CC Docket  
7 No. 96-45, Report to Congress, 13 FCC Rcd 11501 ¶¶ 21, 39, 43-46 (rel. April 10, 1998);  
8 Telecommunications Carriers' Use of Customer Proprietary Network Information and Other  
9 Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and  
10 272 of the Communications Act of 1934, as Amended, CC Docket Nos. 96-115, 96-149, 13 FCC  
11 Rcd 8061, ¶¶ 45-46 (rel. Feb. 26, 1998).

12 The FCC also has not yet decided whether DSL services must be offered for resale. The  
13 FCC has currently pending before it a rulemaking that will address this issue, as well as whether  
14 and under what terms an ILEC may avoid the resale provisions of Section 251(c) if it offers such  
15 services through a subsidiary. The FCC did not hold that U S WEST's DSL services are subject  
16 to the resale provisions of Section 251(c)(4) in the August 7, 1998 Memorandum Opinion and  
17 Order, and Notice of Proposed Rulemaking in Deployment of Wireline Services Offering  
18 Advanced Telecommunications Capability, CC Docket No. 98-147 ("706 Order"). In that  
19 proceeding, the FCC recognized that the question of whether DSL services need to be resold is  
20 still undecided. The FCC left open the question of whether DSL services are "telephone  
21 exchange services" or "exchange access services." Id. ¶ 38. The FCC indicated that it would  
22 decide that question on a case-by-case basis. Id. ¶ 40. In fact, the FCC issued an order holding  
23 that GTE's DSL services are subject to interstate, not intrastate, jurisdiction, which lends support  
24 for the proposition that such services are exchange access services. See Memorandum Opinion  
25 and Order, GTE Telephone Operating Cos. GTOC Transmittal No. 1148, CC Docket No. 98-79,  
26 FCC No. 98-292 (rel. October 30, 1998). The FCC has previously determined that telephone

1 exchange services are subject to the resale provisions of Section 251, but that exchange access  
2 services are not. 706 Order ¶ 61. In the August 7 Order, the FCC issued a notice of proposed  
3 rulemaking to determine whether DSL services that are exchange access services should be  
4 subject to the resale provisions of Section 251(c)(4). Id. ¶¶ 61 and 189. In addition, the FCC has  
5 indicated that, if an ILEC sells DSL services through a subsidiary, those services would not be  
6 subject to the resale provisions of Section 251. In its notice of proposed rulemaking, the FCC  
7 also requested comment on the terms required for such a subsidiary. Id. ¶ 19.

8 Therefore, the following issues still need to be decided and are pending before the FCC:  
9 (1) whether U S WEST's DSL services are local exchange services or exchange access services;  
10 (2) if they are exchange access services, whether they are subject to the resale requirements of  
11 Section 251; and (3) the terms pursuant to which U S WEST can offer DSL services through a  
12 subsidiary to avoid the resale requirements of Section 251. Until these issues are finally decided,  
13 it is premature to require U S WEST to resell its DSL services in its SGAT.<sup>7</sup>

14 **C. The SGAT Is Neither "Discriminatory" Nor "Inconsistent"**

15 AT&T claims that the SGAT should be dismissed because it contains provisions that are  
16 discriminatory and inconsistent with U S WEST's tariffs and the SGAT itself. AT&T Motion at  
17 10-12. Rather than point to any concrete example of "discrimination" or "inconsistency,"  
18 however, AT&T raises only hypotheticals and speculation. AT&T is offended because Section  
19 6.1.1 states that U S WEST will make certain services available for resale in accordance with the  
20 Act and "will include terms and conditions (except prices) in U S WEST Tariffs, where  
21 applicable." AT&T argues that the "where applicable" language renders the provision  
22 ambiguous and "does not inform[] the purchaser when a U S WEST retail tariff would or would  
23 not be applicable." AT&T Motion at 10. Needless to say, U S WEST has numerous retail tariffs  
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25 <sup>7</sup> AT&T makes a passing attack at the wholesale discounts in the SGAT, but cites no discount that  
26 supposedly violates the Act's pricing rules. AT&T Motion at 6. Indeed, it does not even explain how the  
discounts violate the Act. The Commission should reject this unsupported and conclusory complaint.

1 in Arizona and those tariffs can contain countless terms and conditions. It is simply  
2 inconceivable that U S WEST or any other carrier could anticipate and specify how each  
3 provision from those tariffs would interplay with each resale possibility under the SGAT. The  
4 "where applicable" language is the only feasible way to permit carriers that choose to offer  
5 service under the SGAT to take advantage of applicable tariff provisions as well. The  
6 Commission should permit U S WEST and the affected CLEC to address on a case-by-case basis  
7 through the dispute resolution process or otherwise any actual questions that arise regarding the  
8 interplay between a tariff provision and the SGAT. To the extent U S WEST and the CLEC are  
9 unable to resolve a dispute, the dispute resolution of the SGAT would apply.

10 AT&T posits that U S WEST's Service Quality Plan Tariff in Docket No. E-1051-93-183  
11 "may apply to resellers, or it may not." AT&T Motion at 10. As even AT&T acknowledges, this  
12 tariff "identifies the service quality terms and conditions under which U S WEST will provide  
13 service to end-user customers in Arizona." Id. (emphasis added). By AT&T's own admission,  
14 the Service Quality Plan Tariff does not apply to resellers, but to U S WEST's customers, and  
15 AT&T's attempts to create a "conflict" between this inapplicable tariff and the SGAT is clearly  
16 improper. Thus, AT&T's complaints about the cellular voucher U S WEST offers its customers  
17 for late installation of service is completely inapplicable.<sup>8</sup> AT&T claims that U S WEST's  
18 provision of vouchers to its customers, but not to resellers, violates 47 U.S.C. § 251(c)(4)(B).  
19 This Commission, however, has never determined that cellular vouchers are a service that  
20 U S WEST must resell under the Act.<sup>9</sup> Accordingly, U S WEST does not have an obligation to  
21 provide them to resellers. Indeed, AT&T raised this very issue in its arbitration with U S WEST.  
22 Arbitrator Rudibaugh determined that the issue of "held orders" and the related voucher issue  
23

24 <sup>8</sup> It is remarkable that AT&T, the largest wireless provider in the world, is complaining about cellular  
25 vouchers that U S WEST provides its end user customers. It is certainly able at minimal cost to provide  
26 such vouchers to its own customers, should it choose to do so.

<sup>9</sup> Furthermore, cellular service vouchers are not a part of any service U S WEST provides: in limited and  
specified circumstances, U S WEST will provide some customers with such vouchers. Thus, these  
vouchers are not somehow included in the services U S WEST sells at resale to end users.

1 should be determined in the wholesale service quality docket the Commission initiated. In the  
2 Matter of the Petition of MCImetro Access Transmission Services, Inc. for Arbitration of The  
3 Rates, Terms, and Conditions of Interconnection With U S WEST Communications, Inc.,  
4 Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996, Docket Nos. U-3175-  
5 96-479 et al., Transcript of Proceedings, Vol. VI at 965-966, Vol. VIII at 1511-13, 1516 (ACC  
6 Apr. 10, 1997). Asked by the parties for their reaction to this determination, AT&T agreed that  
7 the issue should be addressed there. Id., Vol. VI at 965 ("Mr. Thayer: My assumption would be  
8 that held orders would be something handled within the quality of service docket").

9 The Commission is currently conducting a separate proceeding to determine the service  
10 quality standards that U S WEST must provide to wholesale customers like AT&T. That  
11 proceeding is ongoing, and the Commission has not yet issued its final rules or decision in that  
12 docket. Having agreed that the issue of held orders (and AT&T's desire for cellular vouchers)  
13 should be addressed in that docket, AT&T cannot raise that complaint here.

14 AT&T also objects to how various CLEC remedy provisions interplay with each other.  
15 AT&T Motion at 11. Again, this is an issue U S WEST and the affected CLEC should resolve if  
16 there is ever any question about a concrete issue or dispute. AT&T's attempts to manufacture  
17 issues relating to the SGAT should be rejected.

18 AT&T claims that the performance measures in the SGAT do not directly track the  
19 measures in the Commission's March 26, 1998 "Quality of Service" order in the service quality  
20 proceeding. AT&T Motion at 11-12. The order AT&T cites is an interim one. After issuance of  
21 the March 1998 order, the parties, including AT&T, jointly submitted a new list of agreed-upon  
22 performance measures to the arbitrator. The performance measures in the SGAT are consistent  
23 with the agreed list. The list of measures the parties jointly submitted is different than the list in  
24 the March 1998 order and, accordingly, the numbering is different. In the SGAT, provisioning  
25 accuracy is addressed in OP-5, not OP-2. AT&T's objections to the OP-2 measurement and the  
26 consistency between the SGAT and the March 1998 order is misplaced.

1 Finally, AT&T objects to SGAT § 10.1.3.4, relating to provision of firm order  
2 commitments ("FOCs"), claiming that § 10.1.3.4 is inconsistent with FCC rules. AT&T Motion  
3 at 12. At the outset, the FCC has issued no rules regarding provision of FOCs. AT&T cites only  
4 FCC decisions on other Bell operating company applications in other states to provide in-region  
5 interLATA relief under Section 271. AT&T Motion at 12 nn. 38-39 (citing Application of  
6 BellSouth Corporation Pursuant to Section 271 of the Communications Act of 1934, as amended,  
7 to Provide In-Region, InterLATA Service in South Carolina, CC Docket No. 97-208,  
8 Memorandum Opinion and Order ¶ 122 (rel. Dec. 24, 1997) ("BellSouth South Carolina Order");  
9 Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of  
10 1934, as amended, to Provide In-Region, InterLATA Service in Michigan, CC Docket No. 97-  
11 137, Memorandum Opinion and Order ¶ 187 n. 479 (rel. Aug. 19, 1997)). These decisions relate  
12 to the systems of other BOCs that do not allow CLECs to access appointment scheduler to obtain  
13 a due date. Therefore, CLECs rely on FOCs for appointment dates when they deal with those  
14 BOCs. U S WEST gives CLECs access to its appointment scheduler, so FOCs are not as  
15 important when CLECs do business with U S WEST. Moreover, to the extent these decisions  
16 are even relevant, the FCC stated that CLECs must receive FOCs in substantially the same time  
17 and manner as the BOC receives the "retail analogue." Id. U S WEST does not have a "retail  
18 analogue" to the FOC.<sup>10</sup>

19 **D. AT&T's Pricing Complaints Are Meritless**

20 **1. The FCC Pricing Rules Remain Under Review**

21 AT&T argues that the FCC pricing rules are currently binding as a result of the Supreme  
22 Court's decision, and the rates in U S WEST's SGAT do not comply with the FCC's pricing rules.  
23 AT&T Motion at 13-15. At the outset, although the Supreme Court's decision settled the matter  
24

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25 <sup>10</sup> Indeed, although AT&T asserts that the SGAT does not provide FOCs in the same time and manner as  
26 U S WEST purportedly receives them, AT&T fails to state in what time and manner U S WEST receives  
the retail analogue. The short answer is it can't: U S WEST does not have a "retail analogue" to the  
FOC.

1 of the FCC's jurisdiction to establish pricing methodologies for state commissions to apply in  
2 arbitrations under §§ 251-252 of the Act, the Supreme Court did not rule on or endorse the FCC's  
3 Total Element Long Run Incremental Cost ("TELRIC") methodology for pricing unbundled  
4 network elements ("UNEs") or its avoided cost methodology. AT&T Corp., slip op. at 6 n.3.  
5 Challenges to the merits of the FCC's pricing rules are currently pending before the Eighth  
6 Circuit. Thus, the FCC's TELRIC rules remain under review and, indeed, remain vacated.<sup>11</sup> In  
7 addition, the Eighth Circuit has not yet issued its mandate to the FCC, implementing the  
8 Supreme Court's decision. Thus, it is uncertain whether the Eighth Circuit will stay those pricing  
9 rules in whole or in part pending its review.

10 Second, AT&T assumes that U S WEST must provide all network elements at cost-based  
11 rates. Under Sections 251(c)(3), 251(d)(2), and 252(d)(1), however, U S WEST's obligation to  
12 provide elements at cost-based rates applies only to elements it must unbundle pursuant to  
13 Sections 251(c)(3) and 251(d)(2); it does not apply to any facility or component that meets the  
14 definition of a "network element" in 47 U.S.C. § 153(29), the provision defining what constitutes  
15 a network element. See 47 U.S.C. § 251(d)(2) (FCC must apply "necessary" and "impair"  
16 standards to determine "what network elements must be made available for purposes of  
17 subsection (c)(3) of [Section 251]"); 252(d)(1) (state commissions must establish cost-based rates  
18 "for purposes of subsection (c)(3) of [Section 251]").

19 As set forth above, the Supreme Court vacated the FCC's list of elements ILECs must  
20 unbundle under Section 251(c)(3) because the FCC failed to give any meaning to the unbundling  
21 standards in Section 251(d)(2) of the Act. Thus, to the extent any network element at issue is not  
22 subject to unbundling under Section 251(c)(3), U S WEST is not required to charge cost-based  
23  
24

---

25 <sup>11</sup> The Eighth Circuit has not yet issued its mandate in response to the Supreme Court's decision. Thus,  
26 the rules the Eighth Circuit vacated, including the FCC pricing rules and the "pick and choose" rule,  
remain vacated at this time.

1 rates under Section 252(d)(1). Instead, U S WEST has pricing flexibility if it chooses to provide  
2 that element to new entrants.

3       **2. U S WEST Should Not Be Required To Deaverage Its UNE Rates in**  
4       **its SGAT.**

5       Regardless, AT&T's sole complaint regarding the UNE rates in U S WEST's SGAT is  
6 that UNE rates must be deaveraged. AT&T Motion at 14-15. The Commission should reject  
7 AT&T's objection. First, as noted above, the Eighth Circuit is currently reviewing the FCC's  
8 TELRIC rules on the merits and thus, the fate of the FCC pricing methodology and geographic  
9 deaveraging is far from certain.

10       Second, it is not clear how the Eighth Circuit or the FCC will implement the Supreme  
11 Court's decision on pricing issues. For example, it is unclear whether the FCC or the Eighth  
12 Circuit will attempt to require state commissions to undo the work of the past two years and  
13 immediately conduct the resource-intensive process of determining ILEC costs or will give state  
14 commissions discretion to apply the FCC rules prospectively only. In fact, the FCC has signaled  
15 that it intends to issue an order permitting state commissions to transition to deaveraged rates,  
16 rather than implement them immediately. See "Moving On," Remarks by William E. Kennard,  
17 Chairman, Federal Communications Commission, before NARUC Winter Meeting, (Feb. 23,  
18 1999).<sup>12</sup> Given this reasonable proposal, it is premature (and misleading) to contend that UNE  
19 rates must be deaveraged immediately.

20       Third, as numerous state commissions, including this Commission,<sup>13</sup> and every federal  
21 court to date<sup>14</sup> has determined, the Act does not require geographic deaveraging. The Eighth  
22 Circuit clearly has grounds for rejecting the FCC's ill-conceived deaveraging scheme.

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23       <sup>12</sup> The National Association of Regulatory Utility Commissioners ("NARUC") also recently filed papers  
24 with the FCC requesting that the FCC stay its geographic deaveraging rule.

25       <sup>13</sup> E.g., In re: U S WEST Communications, Inc., Docket No. RPU 96-9, Final Decision and Order at 33-  
26 35 (IA Dept. of Commerce Utils. Bd. April 23, 1998); In the Matter of the Petition of American  
Communications Services of Pima County, Inc. for Arbitration with U S WEST Communications, Inc. of  
Interconnection Rates, Terms and Conditions Pursuant to 47 U.S.C. § 252(b) of the Telecommunications  
Act of 1996, Docket No. U-3021-96-448 et. al., Order, at 21-22 (AZ Corp. Comm'n Jan. 30, 1998); In the

1 Fourth, the FCC indicated over a year ago that it would provide its universal service  
2 mechanism "beginning on January 1, 1999, for areas served by non-rural LECs, and establish the  
3 process to determine a forward-looking economic cost methodology for areas served by rural  
4 LECs." In re Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 1997 FCC

5  
6 Matter of the Interconnection Contract Between AT&T Communications of the Mountain States, Inc. and  
7 U S WEST Communications, Inc. Pursuant to 47 U.S.C. § 252, USW-T-96-15, Second Arbitration Order  
8 at 27-28 (Idaho PUC June 6, 1997); AT&T Communications of the Midwest, Inc., Interconnection  
9 Arbitration Application, Case No. PU-453-96-497, Arbitrator's Supplemental Decision at 2-3 (N.D. PSC  
10 April 2, 1997); In the Matter of the Interconnection Contract Negotiations Between AT&T  
11 Communications of the Midwest, Inc. and U S WEST Communications, Inc. Pursuant to 47 U.S.C. § 252,  
12 TC96-184, Findings of Fact and Conclusions of Law; Order and Notice of Entry of Order at 12 (S.D.  
13 PUC March 20, 1997); In the Matter of the Petition of AT&T Communications of the Pacific Northwest,  
14 Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. § 252(b) of  
15 the Telecommunications Act of 1996, ARB 3, ARB 6, Order No. 97-003, Arbitrator's Decision on Issue  
16 78 (OR PUC Jan. 6, 1997); AT&T Communications of the Midwest, Inc./MCImetro Access Transmission  
17 Services, Inc./MFS Communications, Inc./U S WEST Communications, Inc., Docket Nos. P-442, 421/M-  
18 96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729, Order Resolving Arbitration Issues at 63-64  
19 (MN PUC Dec. 2, 1996); In the Matter of the Interconnection Contract Negotiations Between AT&T  
20 Communications of the Mountain States, Inc., and U S WEST Communications, Inc., Pursuant to 47  
21 U.S.C. § 252, Docket No. 96A-345T, Decision Regarding Petition for Arbitration at 83-84 (CO PUC  
22 Nov. 27, 1996). Numerous other state commissions outside U S WEST's service territory have similarly  
23 declined to impose geographic deaveraging in proceedings under the Act. E.g., In the Matter of the  
24 Commission Investigation and Generic Proceeding on GTE's Rates For Interconnection Services  
25 Unbundled Elements, Transport And Termination under the Telecommunications Act of 1996 and  
26 Related Indiana Statutes, Cause No. 40618, 1998 Ind. PUC LEXIS 482 at \*66-68 (Ind. Util. Reg.  
Comm'n May 7, 1998); Rulemaking on the Commission's Own Motion to Govern Open Access to  
Bottleneck Services and Establish a Framework for Network Architecture Development of Dominant  
Carrier Networks; Investigation of the Commission's Own Motion into Open Access and Network  
Architecture Development of Dominant Carrier Networks, Docket Nos. R. 93-04-003, 193-04-002,  
Decision No. 98-02-106, 1998 Cal. PUC LEXIS 294 at \*71-73 (CA PUC Feb. 19, 1998); Petition of  
AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an  
Interconnection Agreement between AT&T and GTE Southwest, Inc. and Contel of Texas, Inc., Docket  
No. 16355, Arbitration Award at 129-30 (TX PUC Dec. 13, 1996); Petition of New England Tele. &  
Tele. Co. for Arbitration Pursuant to § 252(b) of the Telecommunications Act of 1996 to Establish and  
Interconnection Agreement with AT&T, Docket No. 5906, Order re Arbitration (VT PSB Dec. 4, 1996);  
In re Petition by MFS for Arbitration of Interconnection Rates, Terms and Conditions with BellSouth  
Telecommunications, Inc. under the Telecommunications Act of 1996, Docket No. 6759-U, Order Ruling  
on Arbitration (GA PSC Nov. 8, 1996).

<sup>14</sup> E.g., U S WEST Communications, Inc. v. Thoms, Civil No. 4-97-CV-70082, slip op. at 71-74 (S.D.  
Iowa Jan. 25, 1999); AT&T Communications of the Pacific Northwest, Inc. v. U S WEST  
Communications, Inc., Civil No. 97-1578-JE, 1998 U.S. Dist. LEXIS 20077 (D. Or. Dec. 11, 1998); MCI  
Telecommunications Corp. v. U S WEST Communications, Inc., Civil No. 97-1576-JE, 1998 U.S. Dist.  
LEXIS 20078 (D. Or. Dec. 9, 1998); MCI Telecomm. Corp. v. U S WEST Communications, Inc., Case  
No. C97-1508R, slip op. (W.D. Wash. July 21, 1998); MCImetro Access Transmission Services, Inc. v.  
GTE Northwest, Inc., No. C97-742WD, 1998 U.S. Dist. LEXIS 11335 (W.D. Wash. July 7, 1998).

1 LEXIS 5786 at \*8 (released May 8, 1997) ("Universal Service Order"). To date, however, the  
2 FCC is far from finished with its universal service proceedings. Recognizing that hoped-for  
3 resolution of universal service funding is not a reality, the FCC has stated that until it implements  
4 explicit subsidies, "the existing system of largely implicit subsidies" will have to "continue to  
5 serve its purpose." Universal Service Order ¶ 17. Thus, to the extent the CLECs contend that  
6 averaged UNE rates contain "implicit" subsidies, the FCC has stated that those should remain in  
7 place until explicit universal service reform is implemented.<sup>15</sup>

8 Finally, while the FCC may have authority to establish a pricing methodology for  
9 purposes of §§ 251-252, it does not have authority to determine intrastate rates. As the Supreme  
10 Court stated:

11 Insofar as Congress has remained silent . . . § 152(b) continues to function.  
12 The [FCC] could not, for example, regulate any aspect of intrastate  
13 communication not governed by the 1996 Act on the theory that it had an  
14 ancillary effect on matters within the [FCC's] primary jurisdiction.

15 AT&T Corp., slip. op. at 14 n.8 (emphasis in original); see also 47 U.S.C. § 152(b).

16 Requiring deaveraging of UNE rates will impermissibly intrude on this Commission's intrastate  
17 rate making authority by requiring the Commission to deaverage intrastate retail rates. As  
18 U S WEST has consistently maintained, and several courts and state commissions have  
19 recognized, it is manifestly unfair to require U S WEST to charge average retail rates, but  
20 deaverage its wholesale rates.

21 This Commission has already declined to require deaveraging of UNE rates in other  
22 proceedings. Given the likelihood of an FCC order permitting transition to deaveraged rates and  
23 the pending Eighth Circuit review of the FCC's pricing rules, the Commission should reject  
24 AT&T's claim that UNE rates must be deaveraged in U S WEST's SGAT.

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25 <sup>15</sup> As all federal courts to date have determined, forward-looking cost-based UNE rates that are applied  
26 across a state are "cost-based" under § 252(d). Thus, U S WEST does not agree with the CLEC claim  
that such rates have impermissible subsidies.

1           **3.     U S WEST's Pricing Proposal for Collocation Complies With the Act.**

2           AT&T claims that the Commission must dismiss the SGAT because the SGAT provides  
3 that certain collocation prices will be determined on an "individual case basis." AT&T Motion at  
4 17-18. Individual case basis ("ICB") pricing, however, is the only feasible means for U S WEST  
5 to address collocation requests in an SGAT at this time. U S WEST has numerous central offices  
6 and potential collocation premises in Arizona. Each central office is different in terms of size  
7 and layout. Furthermore, each collocation request is unique in terms of the CLEC's space  
8 requirements and selected collocation option (shared, cageless or caged). U S WEST has  
9 received no projections from CLECs such as AT&T of their collocation requirements. Thus,  
10 U S WEST has no way of estimating in the SGAT the costs that any particular collocation  
11 request would entail. Since, as set forth above, the SGAT is a general document available to any  
12 CLEC that wishes to offer service under its terms, and any CLEC obtaining service under it may  
13 collocate in any number of different central offices, ICB pricing is the only feasible means of  
14 addressing collocation requests. Finally, even AT&T recognizes that U S WEST has stated that  
15 it will replace ICB terms once a collocation cost study has been completed and approved. AT&T  
16 Motion at 16. AT&T's objections to the collocation provisions of the SGAT are entirely  
17 misplaced.<sup>16</sup>

18       **E.     The Commission Should Reject AT&T's Complaints About the "Binding"**  
19       **Nature of the SGAT.**

20           AT&T is incorrect that "FCC rules require that an SGAT must provide terms and  
21 conditions that render the services and obligations contained therein to be legally and practically

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22       <sup>16</sup> AT&T relies solely on the FCC's order on BellSouth's application to provide in-region, interLATA  
23 relief in which the FCC found that BellSouth's collocation evidence did not support BellSouth's claim that  
24 it met the requirements of Section 271(c)(2)(B)(ii). BellSouth South Carolina Order ¶¶ 200-08. That  
determination, however, is entirely irrelevant to this proceeding.

25       It goes without saying that the FCC did not review U S WEST's collocation proposal and, therefore, the  
26 FCC's statements about another carrier's different proposal are hardly relevant here. Moreover, AT&T  
goes too far when it states that "the FCC and [Department of Justice] rejected ICB as an acceptable  
pricing mechanism." AT&T Motion at 16. The FCC "rejected" only BellSouth's collocation proposal  
and evidence as a means of supporting BellSouth's 271 application.

1 available." AT&T Motion at 17. There are no such FCC "rules." AT&T's conclusory  
2 statements about the requirements of "contract law" are simply inapplicable to an SGAT. For  
3 example, AT&T faults the SGAT because it does not reflect a "meeting of the minds." AT&T  
4 Motion at 17. However, this is not a negotiated agreement; it is a "statement" of generally  
5 available terms and conditions. As a document available to all CLECs, the SGAT is necessarily  
6 general because U S WEST cannot tailor it to a particular carrier. Moreover, once any CLEC  
7 adopts the SGAT, there will be a "meeting of the minds" between U S WEST and that CLEC.

8 AT&T's specific objections to the "binding nature" of the SGAT are baseless and border  
9 on being silly. The "questionnaire" that U S WEST requests (and AT&T denounces) assists  
10 U S WEST in providing service to these different CLECs. In addition, some of the "uncertainty"  
11 AT&T decries is intended to permit CLECs to have some input and control over the provision of  
12 service. Thus, the implementation schedule is "agreed upon" rather than pre-determined without  
13 any input from the CLEC. In addition, the dispute resolution provision of the SGAT can be used  
14 to address any disagreement regarding other terms of the SGAT.

15 Furthermore, AT&T's conclusory statements about the dispute resolution provisions and  
16 limitation of liability provisions, AT&T Motion at 18, are baseless. That U S WEST excludes  
17 liability for punitive damages and provides for resolution of disputes in a particular forum does  
18 not make the SGAT any less "binding." Limitation of liability and dispute resolution provisions  
19 are routine contract terms.

20 AT&T also raises conclusory objections to allegedly "one-sided, non-reciprocal" terms in  
21 the SGAT, such as the requirement for CLEC insurance coverage, slamming charges, the  
22 exclusion of liability for CLEC end-user fraud, the prohibition on the use of U S WEST's name  
23 and service mark for comparison purposes, and the preservation of U S WEST's marks. AT&T  
24 Motion at 18. These are all valid contract terms. While AT&T objects to these provisions, it has  
25 not demonstrated that any of them are unreasonable, discriminatory or violate any provision of  
26 the Act or FCC rules.

1 Finally, AT&T claims that U S WEST has "failed to make even a minimal attempt to  
2 bring the SGAT into compliance" with the FCC's reinstated "pick and choose" rule, 47 C.F.R.  
3 § 51.809. AT&T Motion at 19. The purpose of the SGAT is to provide a document in whole  
4 that a CLEC can sign and which will go into effect immediately. U S WEST through submission  
5 of its SGAT does not deny CLECs the ability to avail themselves of the "pick and choose" rule,  
6 once that rule becomes effective. Rather, the proper means to invoke that rule is through the  
7 negotiation and arbitration provisions of Section 252 of the Act. Accordingly, any CLEC that  
8 wishes to use the "pick and choose" rule may do so through that process.

9 It seems that by attacking the SGAT, AT&T is actually seeking to insert its own terms  
10 and conditions into the document. AT&T has its own contract with U S WEST. The SGAT is  
11 intended to permit other CLECs to offer service in Arizona. The Commission should reject  
12 AT&T's challenges and permit the SGAT to take effect so that these other carriers can choose for  
13 themselves whether to use the SGAT or obtain service through some other means.

14 **II. CONCLUSION**

15 For the foregoing reasons, the Commission should deny AT&T's motion to dismiss  
16 U S WEST's SGAT. There is no need for the Commission to waste its time and resources  
17 holding a hearing on the SGAT concurrently with the hearing on U S WEST's Section 271  
18 application. AT&T's claims are meritless, and have been fully addressed in the briefs of the  
19 parties. To the extent U S WEST relies upon its SGAT to support its Section 271 application,  
20 the proper proceeding in which to determine U S WEST's ability to rely upon its SGAT to  
21 support its application is in that proceeding.

22 ....

23 ....

24 ....

25 ....

26 ....

1 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of March, 1999.

2 U S WEST COMMUNICATIONS, INC.

3  
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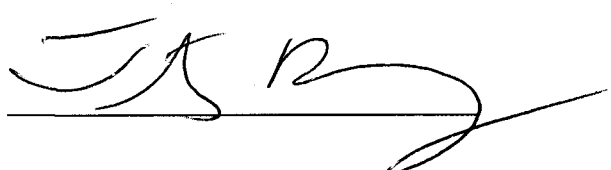
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